

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14971 of Mary House, Inc., pursuant to 11 DCMR 3107.2, for a variance to allow a nonconforming use to be extended to portions of a structure not devoted to that nonconforming use (Sub-section 2002.3), and a variance to allow a structure devoted to a nonconforming use to be enlarged (Sub-section 2002.5) for the proposed construction of a three-story addition to a structure devoted to a nonconforming apartment house on the first and second floors in an R-1-B District at premises 3012 - 14th Street, N.E., (Square 3959, Lot 13).

HEARING DATE: March 15, 1989
DECISION DATE: April 5, 1989

FINDINGS OF FACT:

1. The property is located on the west side of 14th Street between Hamlin and Irving Streets and is known as premises 3012 - 14th Street, N.E. It is zoned R-1-B.
2. The site is rectangular in shape with a lot area of approximately 6,758 square feet and a frontage of fifty feet along 14th Street.
3. The site is currently improved with a two-story plus attic structure. The structure is occupied as a four-unit apartment building pursuant to Certificate of Occupancy No. B-147254 dated February 8, 1988. The structure has been used as a four-unit apartment building from 1939 to the present.
4. The site has a sixty-nine foot rear yard which has a steep upward slope. Four parking spaces are provided in the rear yard adjacent to an existing four-car garage which is used for storage. The rear yard is enclosed with a six foot wood stockade fence.
5. The site abuts the intersection of a twelve foot wide north-south public alley and a fifteen foot wide east-west public alley to the rear. Neither public alley provides access to the site. The level of the public alley system is approximately at the roof level of the existing four-car garage.

6. The area surrounding the subject site is predominantly developed with large single family dwellings characteristic of the R-1-B zoning. The Lucy Slowe School is located at 14th and Jackson Streets, approximately one block north of the site. There are several churches in the area. The nearest commercial development is located along 12th Street from Rhode Island to Michigan Avenues and at the intersection of Rhode Island Avenue and 14th Street.

7. The applicant is a non-profit organization which was established in 1981 to provide housing and other services related to the social and economic needs of homeless families and distressed women and children. The applicant purchased the subject premises in 1987 and rents the existing four units to low-income families at a subsidized rent. The applicant also provides emergency housing services for women and children at properties it owns in the neighborhood at 4303 - 13th Street and 1331 Monroe Street, N.E.

8. In addition to its housing program, the applicant provides pre-natal advocacy, counseling and outreach services, and distribution of free food, clothing and furniture. None of these services take place at the subject site.

9. Each of the existing units contains a living room, bedroom, kitchen and bath with an eight by ten foot wood porch at the rear. The attic space, which is currently unused, has heating, electricity and seven windows for ventilation.

10. The wooden porches at the rear of each unit are delapidated. There is no access from the second floor porches to the ground level.

11. The applicant proposes to replace each the existing wooden porches with a ten by ten foot bedroom, construct new porches and a stairwell at the rear of the structure, and add a dormer to the existing attic space in order to use that space as a common recreation area for the residents of the apartment building. The proposed addition conforms to all of the area requirements of the R-1-B District.

12. The existing structure is currently devoted to a nonconforming use. The Zoning Regulations preclude the extension of a nonconforming use to portions of the property not presently devoted to such use and further preclude the enlargement of a structure devoted to a nonconforming use unless such enlargement is devoted to a conforming use. The applicant is therefore seeking variance relief to permit the proposed addition to the existing nonconforming apartment building use.

13. The applicant indicated that the property is unique in that it is the only apartment building in the immediate vicinity. The nonconforming structure and use predate the zoning regulations. An addition to the structure and extension of the use is necessary to enable the applicant to continue as a safe, efficient apartment building with adequate space for its residents.

14. The applicant pointed out that without the variance relief requested, there is no reasonable way to expand the current structure or to provide a safe fire exit.

15. It was further noted that the construction will not extend beyond the depth of the adjacent structures and that the addition will only be made to the rear of the structure where there are no neighbors residing.

16. The applicant testified that the proposed changes are consistent with the intent, purpose and integrity of the Zoning Regulations in that Mary House will provide an indoor play area for the children, thereby keeping them off of the street. Furthermore, the indoor fire staircase enhances safety for all of the residents.

17. The Office of Planning (OP), by report dated March 6, 1989, and through testimony at the hearing, recommended approval of the application with the following conditions:

- A. The apartment building should be occupied by persons qualified for subsidized low and moderate income housing, as defined by the D.C. Department of Housing and Community Development;
- B. Each apartment unit should be occupied by a maximum of four (4) persons; the total population of the apartment building should not exceed sixteen (16) persons; and
- C. The third floor or attic space is to be used exclusively for recreation purposes or as a leisure area for the building's residents only.

OP recommended these conditions to minimize any negative impact on the neighborhood.

18. OP pointed out that the use of the structure predates the Zoning Regulations creating an exceptional situation for the applicant. Further, OP indicated that the applicant is in compliance with the zoning requirements regarding lot area, lot width, lot occupancy, rear and side yards. The Board is in accord with the opinion of the Office of Planning and notes that the applicant has agreed to conditions A and B above.

19. Advisory Neighborhood Commission (ANC) 5A by letter dated March 8, 1989 and through testimony at the hearing, expressed opposition to the application. The ANC expressed the following views:

- (a) The applicant is merely trying to increase the return on its investment by expanding the apartment house.
- (b) To grant the requested relief would contravene the zoning policy to eliminate nonconforming uses.
- (c) The standards for granting variances have not been met. The apartment house is typical, not unique. The hardship is self imposed and the intent and purpose of the Zoning Regulations would be to protect quiet residential areas with single family homes from incompatible uses.
- (d) The conditions proposed by OP limiting the number of residents, could place the applicant in the position of discriminating against children under the D.C. Human Rights Act.
- (e) The number of tenants could increase to 25 if the attic were converted into habitable space. This would create a crowded condition, causing a negative impact on vehicular and pedestrian traffic in the area.
- (f) The apartment house will negatively affect the property values of the single family residences nearby.

20. The Board appreciates the foregoing concerns of the ANC but does not concur. Responding to the ANC, the Board finds the following:

- (a) The applicant is a non-profit organization which operates at a loss and supplements its costs with charitable contributions. Therefore, the applicant does not seek to make a profit from the addition.
- (b) The Board has authority to grant variances from the zoning requirements where the standards for such relief have been met.
- (c) The applicant has addressed the standards and met the burden under each.
- (d) The provision in the D.C. Human Rights Act referred to by the ANC concerns the procedure by which it is determined whether discriminatory

practices have occurred. The Act creates a rebuttable presumption of discrimination, which serves to shift the burden to the landlord to show that there is no discrimination. The provision, being procedural rather than substantive in nature, is not violated by a condition limiting the number of residents at the subject apartment building.

- (e) The applicant has proposed to create a recreational facility in the attic, not to construct another habitable unit. Further, the applicant has agreed to limit the number of residents to 16. Therefore, the ANC is unwarranted in suggesting that 25 tenants might reside on the premises and adversely impact traffic in the area.
- (f) According to the District of Columbia Department of Finance and Revenue, properties in the subject area are assessed based on the Market Data Approach which takes into consideration recent sales of comparable properties. Therefore, the assessment rate for a 4-unit apartment house would be different from that of a single-family dwelling when both are located in the same square and neighborhood. Consequently, the applicant's property would not negatively affect single family residences located nearby.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a variance to allow a non-conforming use to be extended to portions of a structure not devoted to that non-conforming use and a variance to allow a structure devoted to a nonconforming use to be enlarged. The granting of variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the requested relief will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof.

The Board is of the opinion that the nonconforming aspect of the subject structure and its use, which predate the Zoning Regulations, create an exceptional situation for

the applicant. The Board further believes that this non-conformity creates a practical difficulty for the applicant in its attempt to improve the use of the property and comply with the Zoning Regulations.

The Board concludes that the proposed addition will be made only to the rear of the site and will extend no further than the two adjacent structures. Further, the applicant has agreed to limit the number of tenants that will occupy the subject property. The Board, therefore, concludes that the subject application will not be a substantial detriment to the public good.

The Board is of the opinion that the applicant's proposed plan will improve the living space and increase fire safety for its tenants. The Board concludes that the applicant meets the purpose and intent of the Zoning Regulations.

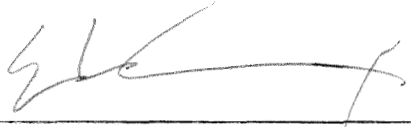
The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Residents of the apartment building shall be persons qualified for subsidized low and moderate income housing as defined by the D.C. Department of Housing and Community Development.
2. The number of residents per apartment unit shall not exceed four. The total population of the apartment building shall be sixteen or fewer residents.
3. The third floor or attic space shall be used exclusively for recreation or leisure purposes by residents of the subject premises only.

VOTE: 5-0 (Charles R. Norris, Carrie L. Thornhill, William F. McIntosh and Paula L. Jewell to grant; Elliott Carroll to grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14971order/BHS14

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14971

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated _____, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Robert Artisst, Chairperson
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EDWARD L. CURRY
Executive Director

DATE: DEC 1 1969